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Attempts to shield CIA may be unconstitutional

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WASHINGTON — The Reagan administration's attempt to shield the CIA from public intrusion has extended to what may be an unconstitutional area.

Congress recently passed an administration proposal to prohibit publicizing the identity of an American intelligence agent. Under Public Law 200, a journalist could be convicted for publishing the name of a CIA agent, even if it was obtained from unclassified material. Punishment for violation of the law is up to 18 years in prison and a \$90,000 fine.

The effort to criminalize the transfer of unclassified material is "absolutely unprecedented and terribly dangerous," constitutional law expert Floyd Abrams, attorney for the New York Times, told the Senate Intelligence Committee.

Had this statute been on the books in 1960, Abrams testified in a 1980 hearing, those who published Francis Gary Powers' name as the CIA pilot downed by a Soviet plane during the U-2 crisis would have been subject to criminal prosecution until the president publicly acknowledged he was an intelligence agent.

The rationale for the identities protection centers on the systematic effort of Philip Agee and the co-editors of the Covert Action Information Bulletin to disclose the names of intelligence agents.

In a six-year period, Agee's works — "Dirty Work: The CIA in Western Europe," and "Dirty Work 2: The CIA in Africa," plus the "Naming Names" column in the Covert Action Information Bulletin — have revealed the names of more than 2000 CIA officials and agents.

A 1981 staff report by the Senate Select Committee on Intelligence called this "a systematic effort to destroy the ability of our intelligence agents to operate clandestinely."

The report attributed the 1975 murder of Athens Station Chief Richard S. Welch and a 1980 assassination attempt on Jamaica Station Chief Richard Kinsman to the publication.

"Less than 48 hours before the second attack, Louis Wolf had publicly alleged that Richard Kinsman and 14 other U.S. Embassy officials in Jamaica were working for the CIA," the report said.

"That statement is a lie," said Louis Wolf, co-editor of the Bulletin. Wolf insisted that Welch's identity "had been revealed by other publications at least 10 years prior to his death."

Nor does Wolf believe he had any influence on the alleged attempt to kill Kinsman.

"We believe the Kinsman assassination attempt was made up to discredit us. He had been named by us not 48 hours in advance but nine months in advance."

Wolf also charged that no evidence of an assassination attempt was revealed.

Wolf said the government intends to use Public Law 200 to

produce a chilling effect on the nation's newspapers.

"This is intended to do more than stop our column," he said. "It is intended to stop anyone from contemplating doing the same thing. The government is trying to protect its illegal covert operations not only from us, but from the establishment press as well."

The committee report said only that individuals whose "intentional well-evidenced course of conduct involves a pattern of activities intended to identify covert agents in order to impede U.S. foreign intelligence activities" would be prosecuted under the law.

"This law does not permit a newspaper man to be prosecuted for naming one intelligence agent in the course of a story," said former CIA Director Stansfield Turner.

In a recent interview, Turner said the government had to show a "pattern of activities and a deliberate intent to disclose the names of agents in order to foil American intelligence efforts."

The former CIA director said the innocent newsman is protected by the law. But, he also said, "Anyone who reveals CIA agent names in order to diminish our intelligence activities deserves to be punished."

Freedom of the press is not unrestricted."

While the clear purpose of the law is to stop the naming of any intelligence operative, the information gathered to identify a CIA agent can be obtained from material already in the public domain. The co-editors of the Covert Action Information Bulletin discovered CIA names through government registers and personnel biographies publicly released by the State Department.

If, through research in public sources, the identity of a CIA agent were often revealed, that would constitute "naming names," and would be punishable under the law, Abrams testified.

The Senate Select Committee reported it rejected the "contention that the identities of imperfectly covered intelligence persons are part of the public record."

The committee reasoned that "those seeking to learn (identities) without the use of classified information must frequently engage in physical surveillance, in search of personnel records."

The committee equated surveillance and investigation through the public record with counterespionage against the